

Hearings on Religious Freedom in India and Pakistan: Mr. M.L. Shahani Oral Testimony

September 18, 2000

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MR.

SHAHANI: Yes, honorable commissioners, fellow panelists, ladies and gentlemen, I am indeed grateful for this opportunity to describe how the laws of Pakistan affect the lives of religious minorities in my country. I have served for over 25 years as an attorney in Pakistan, mainly in private practice, and for a brief period, as an advocate general of Sind and judge of the high court of Sind.

I have represented many individuals from minority communities who have been drawn into the mechanism of our legal system because of their religious affiliation. The essential point I would like to make is this: that non-Muslim citizens in Pakistan are, by operation of law, separate and unequal citizens. Understandably so, because the Constitution of the Islamic Republic of Pakistan is loaded in favor of the Islamic faith, which, in practice, makes non-Muslim citizens of the country unequal citizens.

Please consider the following Constitutional provisions: one, the preamble says that the sovereignty of the Republic rests with God almighty; two, Article 2 of the Constitution says that Islam shall be the state religion; three, Article 2A adopts the objective resolution as an annex of the Constitution. Unfortunately, before the resolution was made a substantive provision of the Constitution through the 14th Amendment, the word "free" in the clause relating to the freedom of the non-Muslim minorities was removed, so that the adoption carried the potential of reducing the protection afforded to non-Muslims.

Four, Article 20 of the Constitution deals with the freedom of religion subject to law. Article 51 and Article 106 of the Constitution adopts communal electorate or separate electorate. A non-Muslim lawyer cannot appear before the Federal Shariya Court by virtue of the embargo of Article 203(e) of the Constitution. The president and the prime minister not only have to be Muslims but must declare so while taking their oath of office.

The impact of these constitutional provisions are a non-living organ--that is, the state--has been given religion. The other citizens who do not belong or subscribe to this state religion live in perpetual fear. When religion is mixed with politics, both lose their efficacy as an instrument of change in the society.

For example, the religion, which is on a higher pedestal, meets politics, it loses the higher position, and politics, which is dirt, and everything is possible in politics, gains impetus to meet religion at the higher level. The fear of non-Muslims when the objective resolution was adopted were expressed by the fact-finding team of the International Commission of Jurists. Their report was published in the form of a booklet by the Human Rights Commission of Pakistan. A commission, which is the International Jurists' Commission, described some laws which treat Muslims and non-Muslims differently and then said, at page 101 and 102, "These ordinances may offend against the Constitutional guarantees of religious freedom and equality before the law. But they are possibly immune from Constitutional challenge because of the validation given to all of the ordinances made by the President during the martial law." That is in the 14th Amendment.

"Whether or not this is so, there is undoubtedly anxiety amongst those belonging to the non-Muslim religion that their position will become even more worse with the adoption to the Constitution of this 9th Amendment bill that has not been adopted. Under that amendment, the injunctions of Islam as laid down in the Holy Koran and Sunna shall be the supreme source of guidance, and any law held by the Federal Shariya Court to be repugnant to those injunctions will cease to have effect.

"Although this power is not supposed to extend to any provisions of the Constitution, including the guarantees of the religious freedom, there is no confidence that this will ultimately be proved to be so. This concern stems partly from the existing application of Islamic criminal laws on the non-Muslims, but also from the fact that when the objective resolution was incorporated as an annex to the Constitution by the revival of the Constitution of 1973 order, the word "freely" was omitted from the clause concerning adequate provisions for minorities to profess and practice their religion.

"This unexplained omission leads them to fear that there will be further encroachment on their religious freedom with the development of Islamization."

Non-Muslim citizens of this country were being killed on the false accusation of blasphemy, such as late Nyamath Hamad [ph] and others in extrajudicial killings. Section 295(b) and Section 295(cppc)

have become tools in the hands of the fundamentalists to persecute non-Muslim citizens of the country.

Five, the superior judiciary has also ruled the phrase subject to law as used in Article 20 of the Constitution, the fundamental right which guarantees freedom of religion and protection from taxes on the basis of religion means subject to Islamic law, and this judgment is 1993, Supreme Court Monthly Review, 1918 at page 1772 to 1774.

This ruling also affects Article 4, which specifically guarantees that all citizens, without classification of religion, are equal before the law and entitled to the equal protection of law. I may pause here from my written text and say that in this very judgment by a majority view, religion has been equated with property rights or intellectual property rights like trademarks. When the law relating to equality between a Muslim citizen and a non-Muslim citizen would be decided on the touchstone of Holy Koran and Sunna, the law will always tilt in favor of a Muslim citizen, while a non-Muslim will continue to live in perpetual fear and fear to an even greater degree because of the objective resolution.

Some argue that in an Islamic state, a non-Muslim cannot judge the causes of Muslims. Thus, non-Muslim citizens are not to be appointed as judges, and the services of the existing non-Muslim judges can be dispensed with. Subconstitutional legislation like Section 295(c) was introduced in the penal code relating to blasphemy of Prophet Muhammad, peace be upon him. By virtue of the decision of the Federal Shariya Court, it now carries a mandatory death sentence.

The criminal procedure code states that the judge presiding at the trial of the blasphemy case shall be Muslim, and incidentally, I may say that of all the penal laws of our country, this is the only section--that is, 295(c)--for whose trial the religious qualification of a judge is prescribed.

The provisions of Section 295(c) are more abused than observed. Most of the cases under Section 295(c) are based upon false accusation and are aimed at settling personal scores or personal vendettas. Moreover, when Muslim judges preside over such trials, it has been observed that the judgment delivered is neither fair nor legal. One such example is that of Gulma Sei [ph]. He was accused of blasphemy by a neighbor with whom he had a dispute over a tape water [ph]. The complainant charged Gulma Sei and his brother with blasphemy. During the course of the investigation by police, it transpired that his brother was not even in the village when the incident is alleged to have occurred.

In the first information report, the complainant gave the names of two witnesses who, according to him, were present when the words of blasphemy were uttered by the accused. The witnesses did not support the case of prosecution, and they stated that they were not present, nor did they know of any such incident relating to blasphemy attributed to the accused.

The judge in the judgment wrote: "Although the prosecution witnesses did not support the case of prosecution, nevertheless, the complainant is a young man of 21 years; a student of third year college; and has appeared and appears to be a true Muslim and has no rhyme or reason to falsely implicate the accused." He then sentenced the accused to death. Fortunately, an appeal was allowed.

Gentlemen, I am, because of paucity of time, I will skip over, but my testimony is before you all.

Concluding, I would say that injustice does not stop within the borders of the country where it originates. It has a transnational approach. That is why Martin Luther King, Jr. said that injustice anywhere is a threat to justice everywhere. And for the purpose of the policy, let us not be accused again by Martin Luther King, Jr., who said the greatest sin in our times lies not with the few who destroy but with many who remain silent.

Thank you.